STATE OF MICHIGAN

COURT OF APPEALS

ARNULFO OCEGUERA and MARIA GONZALEZ-OCEGUERA, Plaintiffs-Appellants, v SEAWAY COMMUNITY BANK, Defendant-Appellee.	UNPUBLISHED July 26, 2011 No. 298174 Macomb Circuit Court LC No. 2009-001179-CH

Before: M. J. KELLY, P.J., and O'CONNELL and SERVITTO, JJ.

PER CURIAM.

Plaintiffs Arnulfo Oceguera and Maria Gonzalez-Oceguera, husband and wife, appeal as of right the trial court's order granting defendant Seaway Community Bank's motion for summary disposition. Because the trial court properly granted Seaway's motion, we affirm.

In 2005, plaintiffs entered into a sales agreement to purchase commercial real estate in Chesterfield Township with the intent of moving their grocery store there. Seaway agreed to finance the transaction in one of two ways. Seaway offered to loan plaintiffs $227,500, which was to be secured by a mortgage on the commercial property along with plaintiffs' personal guarantees. In the alternative, Seaway offered to loan plaintiffs $350,000, which would be secured by a mortgage on the commercial property and on plaintiff's residence along with plaintiffs' personal guarantees. Plaintiffs elected the second option and took out the $350,000 loan.

At the closing, plaintiffs executed a mortgage on both the commercial property and their residence. Arnulfo Oceguera testified at his deposition that he understood that Seaway would remove the mortgage on their residence after he acquired a 30 percent equity interest in the commercial property. He stated that, when he asked the Seaway representative about this at the closing, he was assured that his understanding was correct. However, he admitted that he did not understand English very well at the time he signed the loan documents, that he could not read the documents, and that he did not have anyone review the documents even though he had time to do so. Arnulfo Oceguera also conceded that he had not repaid $105,000, which amounted to 30 percent of the loan amount. Nevertheless, he believed that the amount he had spent on improvements to the Property, together with the amounts he repaid on the loan, resulted in 30 percent equity interest in the commercial property.

Plaintiffs subsequently defaulted on the loan, and Seaway sought to foreclose on both the commercial property and plaintiffs' residence. Plaintiffs filed their complaint against Seaway, contending that the outstanding amount due on the loan, $290,000, could be recouped from the sale of the commercial property alone and asking that Seaway be required to foreclose on that property before foreclosing on their residence.

After discovery, Seaway moved for summary disposition, which the court granted under MCR 2.116(C)(10) with respect to all of plaintiffs' claims. The court determined that plaintiffs' fraud-based claims, which stemmed from plaintiffs' understanding of the terms of the loans based on alleged oral representations that were contrary to the written language of the loan documents, were precluded by the explicit integration clauses in the loan documents. Further, because plaintiffs admitted they had not paid 30 percent of the loan amount, the alleged misrepresentation regarding the lien on their residence would not have precluded Seaway from foreclosing on the mortgage.

On appeal, plaintiffs contend that the trial court improperly granted Seaway's motion for summary disposition because there were questions of fact concerning (1) whether there was a meeting of the minds between Seaway and plaintiffs sufficient to create a contract and (2) the oral representations made by Seaway concerning the terms of the loan at the time of the closing. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009).

While the formation of a contract requires mutual assent or a meeting of the minds on all the essential terms, the parties are presumed to have understood the import of its terms and to have had the intention manifested by those terms. *Burkhardt v Bailey*, 260 Mich App 636, 656; 680 NW2d 453 (2004). A meeting of the minds is judged by an objective standard, considering the express words of the parties and their visible acts rather than their subjective states of mind. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 454; 733 NW2d 766 (2006).

Here, the mortgage unequivocally provides that it is on both the commercial property and plaintiffs' residence. None of the loan documents have any mechanism providing for the removal of the mortgage on the residence at any time before payment of the full loan amount. Plaintiffs cannot argue that there was no mutual assent to the agreement because of their subjective understanding of the transaction. The visible acts of the parties—their execution of the loan documents—provides the basis for concluding that there was mutual assent to the terms of the transaction as provided in the documents. This conclusion is reinforced by the fact that the loan documents contained integration clauses. The joint mortgage on the commercial property and the residence provides that the mortgage is "complete and fully integrated" and "may not be amended or modified by oral agreement." Similarly, the commercial promissory note and commercial loan agreement, which plaintiffs signed, contain identical provisions providing that oral agreements pertaining to the loan are not enforceable and that the note "is the complete and exclusive statement of the agreement" and indicating that, by signing the note, the parties affirm that no unwritten oral agreement exists between them.

By limiting the contract to the provisions in writing through an integration (or merger) clause, the parties expressed an intent to nullify any antecedent understandings. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 502; 579 NW2d 411 (1998). When the parties include an integration clause in their written contract, it is conclusive and parol evidence is not admissible to show that the agreement is not integrated except in cases of fraud. *Id.* However, fraud that relates solely to an oral agreement that was nullified by a valid merger clause would have no effect on the validity of the contract. *Id*. at 503. Thus, when a contract contains a valid merger clause, the only fraud that could vitiate the contract is fraud that would invalidate the merger clause itself, i.e., fraud relating to the merger clause or fraud that invalidates the entire contract including the merger clause. *Id.*

In this case, although plaintiffs' claims alleged fraud by Seaway, the alleged fraud did not pertain to the integration clause or fraud that would invalidate the entire contract. Rather, the alleged fraud is contradicted by the very language in the loan documents themselves, which plaintiffs admit they executed. Accordingly, the integration clause precludes plaintiffs from introducing any parol evidence pertaining to their understanding of the terms of the loan that are contrary to the written agreements. See *Michigan National Bank v Laskowski*, 228 Mich App 710, 714-16; 580 NW2d 8 (1998).

It is clear that plaintiffs, notwithstanding any limited knowledge of English, understood the general provisions of the agreements, including that the loan was at least partially secured by a mortgage on their home. They also could have requested that someone with a better understanding of the language review the documents and explain them, but did not do so. As such, in the absence of other evidence tending to show coercion, mistake or fraud, plaintiffs cannot now challenge the validity of the agreements on the ground that they did not fully understand what they were signing. It is well-settled that one who signs an agreement is held to have read and understood the terms of the agreement. See *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 567-68; 596 NW2d 915 (1999) ("This court has many times held that one who signs a contract will not be heard to say, when enforcement is sought, that he did not read it, or that he supposed it was different in its terms."); *Clark v DaimlerChrysler Corp*, 268 Mich App 138, 144; 706 NW2d 471 (2005) ("The law is clear that one who signs an agreement, in the absence of coercion, mistake, or fraud, is presumed to know the nature of the document and to understand its contents, even if he or she has not read the agreement.").

The trial court properly granted summary disposition in favor of Seaway.

Affirmed. As the prevailing party, Seaway may tax its costs. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Peter D. O'Connell
/s/ Deborah A. Servitto